SUPREME COURT OF INDIA

Rakesh Kumar Paul

Vs.

State of Assam

SLP(Crl.)No.2009 of 2017

(Madan B.Lokur,J., Prafulla C.Pant and Deepak Gupta,JJ.,)

16.08.2017

JUDGMENT

Madan B.Lokur,J.,

1. In *Measure for Measure the Duke complains (in the given situation): "And liberty plucks justice by the nose*"[1]. The truth is that personal liberty cannot be compromised at the altar of what the State might perceive as justice - justice for one might be perceived as injustice for another. We are therefore unable to agree with learned counsel for the State that the petitioner is not entitled to his liberty through what is commonly referred to as 'default bail' or that the justice of the case should persuade us to decide otherwise.

2. The facts in these petitions are not in dispute and we need not go into them in any great detail since we are really concerned with the interpretation of the words "imprisonment for a term not less than ten years" appearing in clause (i) of proviso (a) to Section 167(2) of the Code of Criminal Procedure, 1973 as amended in 1978.

A few facts

3.A First Information Report No. 936 of 2016 was lodged on 27 th October, 2016 in respect of allegations made under the provisions of the Prevention of Corruption Act, 1988 (PC Act) and the Indian Penal Code, 1860 (IPC). Although the petitioner was not named in the First Information Report, investigations seemed to implicate him in a very large and structured conspiracy. Accordingly, on 5th November, 2016 the petitioner was taken into custody pending further investigation.

4. Ordinarily, the maximum period of detention during the course of investigation (without a charge sheet or challan being filed) would be 60 days in terms of clause (ii) of proviso (a) to Section 167(2) of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.'). In the petitioner's case, this period would come to an end on 3rd January, 2017. However according to the State, since the petitioner had committed offences which could result in "imprisonment for a term not less than ten years" he could be kept in custody for a period of 90 days in

terms of clause (i) of proviso (a) to Section 167(2) of the Cr.P.C. Therefore, the question before us is whether, pending investigation, the petitioner could be kept in custody for a maximum period of 60 days in terms of clause (ii) of proviso (a) to Section 167(2) of the Cr.P.C. or for 90 days in terms of clause (i) of proviso (a) to Section 167(2) of the Cr.P.C. without a charge sheet being filed.

5. On 20th December, 2016 (before the expiry of 60 days), the petitioner applied for bail before the Special Judge dealing with cases relating to offences under the PC Act. His application was rejected.

6. Subsequently, on or about 11th January, 2017 (after the expiry of 60 days of detention but before the expiry of 90 days of detention), the petitioner applied for bail before the Gauhati High Court, but that application was rejected on 11th January, 2017. The prayer made in the application for bail was for grant of "regular bail" under Section 439 of the Cr.P.C. This is of some importance because, according to learned counsel for the State, assuming the petitioner could be detained only for a maximum period of 60 days during investigations, he had not applied for 'default bail', that is bail in default of the prosecution filing a charge sheet against him soon after that 60 day period of detention, but had only applied for "regular bail".

7. At this stage, it may be mentioned that even though the petitioner had not applied for 'default bail' he did contend before the High Court that he was entitled to 'default bail' since no charge sheet had been filed against him within 60 days of his arrest during investigations. This submission was considered by the High Court but rejected, not on the ground that the petitioner had not applied for 'default bail' but on the ground that he could be detained for 90 days without a charge sheet being filed and that period of 90 days had not yet come to an end. (The period of 90 days would come to an end on or about 2nd February, 2017).

8. To complete the narration of essential facts, it may be mentioned that a charge sheet was filed against the petitioner on 24th January, 2017 that is after 60 days of his detention but before completion of 90 days of detention.

9. In view of the charge sheet having been filed, the modified question before us is whether the petitioner was entitled to 'default bail' with effect from 3rd or 4th January, 2017 onwards and, in any case on 11th January, 2017 when his application for "regular bail" was rejected by the Gauhati High Court.

History behind the enactment of Section 167 of the Cr.P.C.

10. The Code of Criminal Procedure enacted in 1898 contained Section 167 which laid down the procedure to be followed in the event the investigation into an offence is not completed within twenty-four hours. What is significant is that the legislative expectation was that the investigation would ordinarily be completed within twenty-four hours. Incidentally, this legislative expectation continues till today. Whatever be the anxiety of the Legislature in 1898, there can be no gainsaying that investigation into an offence deserves an early closure, one way or the other. Therefore, when Section 167 was enacted in the Code

of Criminal Procedure, 1898 it was premised on the conclusion of investigations within twenty-four hours or within 15 days on the outside, regardless of the nature of the offence or the punishment. Section 167 of the Code of Criminal Procedure, 1898 reads as follows:

> "167. [Marginal Note: Procedure when investigation cannot be completed in twenty-four hours] (1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 61, and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police-station or the police-officer making the investigation if he is not below the rank of sub-inspector shall forthwith transmit to the nearest Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.
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> (2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole. If he has not jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:
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> Provided that no Magistrate of the third class, and no Magistrate of the second class not specially empowered in this behalf by the State Government shall authorise detention in the custody of the police.
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> (3) A Magistrate authorizing under this section detention in the custody of the police shall record his reasons for so doing.
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> (4) If such order is given by a Magistrate other than the District Magistrate or Sub-divisional Magistrate, he shall forward a copy of his order, with his reasons for making it, to the Magistrate to whom he is immediately subordinate.

11. Unfortunately, all laws tend to be misused whenever opportunity knocks, and Section 167 of the Code of Criminal Procedure, 1898 was no exception. Since there was a practical difficulty in completing investigations within the 15 day time limit, the prosecution often took recourse to the provisions of Section 344 of the Code of Criminal Procedure, 1898 and filed a preliminary or incomplete report before the Magistrate to keep the accused in custody. The Law Commission of India noted this in its 41st Report (after carefully studying several earlier Reports) and proposed to increase the time limit for completion of investigations to 60 days, acknowledging that "such an extension may result in the maximum period becoming the rule in every case as a matter of routine: but we trust that proper supervision by the superior courts will prevent that." (Emphasis supplied by us). The view expressed by the Law Commission of India and its proposal is as follows:

"14.19. Section 167 provides for remands. The total period for which an arrested person may be remanded to custody - police or judicial - is 15 days. The assumption is that the investigation must be completed within 15 days, and the final report under section 173 sent to court by then. In actual practice, however, this has frequently been found unworkable. Quite often, a complicated investigation cannot be completed within 15 days, and if the offence is serious, the police naturally insist that the accused be kept in custody. A practice of doubtful legal validity has therefore grown up. The police file before a magistrate a preliminary or "incomplete" report, and the magistrate, purporting to act under section 344, adjourns the proceedings and remands the accused to custody. In the Fourteenth Report, the Law Commission doubted if such an order could be made under section 344, as that section is intended to operate only after a magistrate has taken cognizance of an offence, which can be properly done only after a final report under section 173 has been received, and not while the investigation is still proceeding. We are of the same view, and to us also it appears proper that the law should be clarified in this respect. The use of section 344 for a remand beyond the statutory period fixed under section 167 can lead to serious abuse, as an arrested person can in this manner be kept in custody indefinitely while the investigation can go on in a leisurely manner. It is, therefore, desirable, as was observed in the Fourteenth Report, that some time limit should be placed on the power of the police to obtain a remand, while the investigation is still going on: and if the present time limit of 15 days is too short, it would be better to fix a longer period rather than countenance a practice which violates the spirit of the legal safeguard. Like the earlier Law Commission, we feel that 15 days is perhaps too short, and we propose therefore to follow the recommendation in the Fourteenth Report that the maximum period under section 167 should be fixed at 60 days. We are aware of the danger that such an extension may result in the maximum period becoming the rule in every case as a matter of routine: but we trust that proper supervision by the superior courts will prevent that. We propose accordingly to revise sub-sections (2) and (4) of section 167 as follows:-

"(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days at a time and sixty days in the whole. If he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:
Provided that -

(a) no Magistrate shall authorize detention in any custody under this section unless the accused is produced before him;

(b) no Magistrate of the second class not specially empowered in this behalf by the High Court shall authorise detention in the custody of the police.

(4)Any Magistrate other than the Chief Judicial Magistrate making such order shall forward a copy of his order, with his reasons for making it, to the Chief Judicial Magistrate."

12. The recommendations of the Law Commission of India were carefully examined and then accepted. The basic considerations for acceptance, as mentioned in the Statement of Objects and Reasons dated 7 th November, 1970 for introducing the (new) Code of Criminal Procedure, 1973 were:

> "3. The recommendations of the Commission were examined carefully by the Government, keeping in view among others, the following basic considerations:-
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> (i) an accused person should get a fair trial in accordance with the accepted principles of natural justice;
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> (ii) every effort should be made to avoid delay in investigation and trial which is harmful not only to the individuals involved but also to society; and
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> (iii) the procedure should not be complicated and should, to the utmost extent possible, ensure fair deal to the poorer sections of the community. The occasion has been availed of to consider and adopt where appropriate suggestions received from other quarters, based on practical experience of investigation and the working of criminal Courts.

13. Accordingly, Section 167 of the Code of Criminal Procedure, 1973 (the Cr.P.C.) was enacted as follows, with the recommended time limit and again regardless of the nature of the offence or the punishment:

> "167. [Marginal Note: Procedure when investigation cannot be completed in twenty-four hours] (1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 57, and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.
>
> (2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole: and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:

Provided that

(a) the Magistrate may authorise detention of the accused person, otherwise than in custody of the police, beyond the period of fifteen days if he is satisfied that adequate grounds exists for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this section for a total period exceeding sixty days, and on the expiry of the said period of sixty days, the accused person shall be released on bail if he is prepared to and does furnish bail; and every person released on bail under this section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;

(b) no Magistrate shall authorise detention in any custody under this section unless the accused is produced before him;

(c) no Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorize detention in the custody of the police.

Explanation.- If any question arises whether an accused person was produced before the Magistrate as required under paragraph (b), the production of the accused person may be proved by his signature on the order authorising detention.

(3) to (6) Not relevant for the present purposes.

14. A few years later in 1978, a need was felt to amend Section 167 of the Cr.P.C. by not only extending the period for completing investigation but also relating that period to the offence. Therefore, a shift was proposed to grant an aggregate period of 90 days for completing the investigation in cases relating to offences punishable with death, imprisonment for life or "imprisonment for not less than ten years or more" and up to 60 days in any other case, as stated in the Notes on Clauses accompanying the Statement of Objects and Reasons dated 9th May, 1978 for amending the statute. What is of significance (for our purposes) is the use of the words "imprisonment for not less than ten years or more". In our opinion, the use of the words "or more" gives a clear indication that the period of 90 days was relatable to an offence punishable with a minimum imprisonment for a period of not less than ten years, if not more. The Notes on Clauses reads as follows:

"Clause 13.- Section 167 is being amended to empower the Magistrate to authorise detention, pending investigation, for an aggregate period of 90 days in cases where the investigation relates to offences punishable with death, imprisonment for life or imprisonment for not less than ten years or more and up to 60 days in any other case. These amendments are intended to remove difficulties which have been actually experienced in relation to the investigation of offences of a serious nature.

A new sub-section is being inserted empowering an Executive Magistrate

(Emphasis supplied by us).

15. When Section 167 of the Cr.P.C. was enacted, it was perhaps felt that the words "or more" were superfluous (as indeed we believe that they are in the context of the use of the words "not less than") and Section 167 came to read:

> "167. Procedure when investigation cannot be completed in twenty-four hours - (1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by Section 57, and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.
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> (2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:
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> Provided that, —
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> (a) the Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding,—
> (i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;
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> (ii) sixty days, where the investigation relates to any other offence,
> and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;
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> (b) no Magistrate shall authorise detention of the accused in custody of the police under this section unless the accused is produced before him in person for the first time and subsequently every time till the accused remains in the custody of the police, but the Magistrate may extend further detention in judicial custody on production of the accused either in person or through the medium of electronic video linkage;
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> (c) no Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorise detention in the custody of the police.

Explanation I.- For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the period specified in paragraph (a), the accused shall be detained in custody so long as he does not furnish bail.

Explanation II.- If any question arises whether an accused person was produced before the Magistrate as required under clause (b), the production of the accused person may be proved by his signature on the order authorising detention or by the order certified by the Magistrate as to production of the accused person through the medium of electronic video linkage, as the case may be: Provided further that in case of a woman under eighteen years of age, the detention shall be authorised to be in the custody of a remand home or recognised social institution. (2A) to (6) Not relevant for the present purposes.

16. Generally speaking therefore, it could be said that the legislative intent is and always has been to complete the investigation into an offence within twenty-four hours, failing which within 15 days (Cr.P.C. of 1898). The period of 15 days was later extended to 60 days (Cr.P.C. of 1973) and eventually it was extended to 90 days if the investigation was relatable to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years. In respect of all other offences, the period of 60 days remained unchanged.

17. The significance of the period of 60 days or 90 days, as the case may be, is that if the investigation is not completed within that period then the accused (assuming he or she is in custody) is entitled to 'default bail' if no charge sheet or challan is filed on the 60th or 90th day, the accused applies for 'default bail' and is prepared to and does furnish bail for release. As can be seen from the narration of facts, no charge sheet or challan was filed against the petitioner on the 60th day but was filed before the conclusion of 90 days. Consequently, was the petitioner entitled to 'default bail' after 60 days? According to the petitioner the answer is in the affirmative since he had not committed an offence punishable with imprisonment for not less than ten years, but according to the State he had committed an offence punishable with imprisonment for ten years.

18. So what was the offence allegedly committed by the petitioner? According to the State he was liable for punishment for an offence, inter alia, under Section 13(1) of the PC Act, the offence being "punishable with imprisonment for a term which shall be not less than four years but which may extend to ten years" and fine. Therefore, the view of the State is that since the petitioner could face imprisonment that could extend to 10 years, the date for applying for 'default bail' would commence on the expiry of 90 days. However, according to the petitioner the date for obtaining 'default bail' would commence on the expiry of 60 days that is on or about 3rd January, 2017. (On the facts of this case, we need not quibble on the exact date). To this extent there is no dispute between the petitioner and the State.

Discussion on interpretation

19. To answer the primary question before us, we need to first decide the meaning of the expression "punishable with imprisonment for not less than ten years" occurring in Clause (i) to proviso (a) of Section 167(2) of the Cr.P.C. Its interpretation stirred considerable debate and discussion before us.

20. Learned counsel for the petitioner relied upon *Rajeev Chaudhary v. State (NCT) of Delhi)*[2] to contend that "not less than" 10 years imprisonment must mean a minimum of 10 years imprisonment. In that decision, the offence was punishable under Section 386 of the IPC which provides that an accused, if found guilty, shall be punished with imprisonment for a term "which may extend to 10 years"[3]. This Court contrasted that expression with the words "not less than" occurring in Clause (i) to proviso (a) of Section 167(2) of the Cr.P.C. Juxtaposing the two expressions, this Court concluded that the words "not less than" in Clause (i) would mean that the imprisonment should be 10 years or more and would cover only those offences for which punishment of imprisonment could be for a clear period of 10 years or more. It was held in paragraph 6 of the Report:

> "From the relevant part of the aforesaid sections, it is apparent that pending investigation relating to an offence punishable with imprisonment for a term "not less than 10 years", the Magistrate is empowered to authorize the detention of the accused in custody for not more than 90 days. For rest of the offences, the period prescribed is 60 days. Hence in cases where offence is punishable with imprisonment for 10 years or more, the accused could be detained up to a period of 90 days. In this context, the expression "not less than" would mean imprisonment should be 10 years or more and would cover only those offences for which punishment could be imprisonment for a clear period of 10 years or more. Under Section 386 punishment provided is imprisonment of either description for a term which may extend to 10 years and also fine. That means, imprisonment can be for a clear period of 10 years or less. Hence, it could not be said that minimum sentence would be 10 years or more. Further, in context also if we consider clause (i) of proviso (a) to Section 167(2), it would be applicable in case where investigation relates to an offence punishable (1) with death; (2) imprisonment for life; and (3) imprisonment for a term of not less than ten years. It would not cover the offence for which punishment could be imprisonment for less than 10 years. Under Section 386 IPC, imprisonment can vary from minimum to maximum of 10 years and it cannot be said that imprisonment prescribed is not less than 10 years."

This decision certainly supports the contention of learned counsel and there is also a feeling of deja vu in the use of the words "or more" in the decision, those words having been used in the Notes on Clauses when the Cr.P.C. was sought to be amended in 1978.

21. In contrast, learned counsel for the State referred to and relied upon *Bhupinder Singh v. Jarnail Singh* [4]That case concerned an offence under Section 304-B of the IPC where the punishment provided is not less than 7 years but which may extend to ***imprisonment for life***[5]**.** In other words, the 'punishment range' or 'punishable range' available to a sentencing judge varied from not less than 7 years extending to life imprisonment. Keeping this in mind, it was

noted that what is the adequate punishment in a given case would be decided by the court on the basis of the facts and circumstances before it.

22. The decision in Rajeev Chaudhary was distinguished by recording that the case "related to an offence punishable under Section 386 IPC and the sentence in respect of the said offence is not less than 10 years. This Court held that the expression "not less than" means that the imprisonment should be 10 years or more to attract 90 days' period. In that context it was said that for the purpose of clause (i) of proviso (a) of Section 167(2) CrPC the imprisonment should be for a clear period of 10 years or more."

> This is factually incorrect, inasmuch as Section 386 of the IPC provides for a punishment "which may extend to ten years". It is Clause (i) that uses the expression "imprisonment for a term not less than ten years". This Court unfortunately overlooked the juxtaposition and distinction referred to above.

23. It was further held in paragraph 11 of the Report:

> "The position is different in respect of the offence punishable under Section 304-B IPC. In the case of Section 304-B the range varies between 7 years and imprisonment for life. What should be the adequate punishment in a given case has to be decided by the court on the basis of the facts and circumstances involved in the particular case. The stage of imposing a sentence comes only after recording the order of conviction of the accused person. The significant word in the proviso is "punishable". The word "punishable" as used in statutes which declare that certain offences are punishable in a certain way means liable to be punished in the way designated. It is ordinarily defined as deserving of or capable or liable to punishment, capable of being punished by law or right, may be punished or liable to be punished, and not must be punished."

24. In the context of the word "punishable" occurring in Clause (i) and the meaning attached to this word taken from several dictionaries, this Court held in Bhupinder Singh that where a minimum and maximum sentence is prescribed, both are imposable depending upon the facts of the case. Therefore, if an offence is punishable with imprisonment that may extend upto or beyond or including 10 years, then the period available for completing investigations would be 90 days before the provision for 'default bail' kicks in. It was said in paragraph 15 of the Report:

> "Where minimum and maximum sentences are prescribed, both are imposable depending on the facts of the cases. It is for the court, after recording conviction, to impose appropriate sentence. It cannot, therefore, be accepted that only the minimum sentence is imposable and not the maximum sentence. Merely because minimum sentence is provided that does not mean that the sentence imposable is only the minimum sentence."

25. While it is true that merely because a minimum sentence is provided for in the statute it does not mean that only the minimum sentence is imposable. Equally, there is also nothing to

suggest that only the maximum sentence is imposable. Either punishment can be imposed and even something in between. Where does one strike a balance? It was held that it is eventually for the court to decide what sentence should be imposed given the range available. Undoubtedly, the Legislature can bind the sentencing court by laying down the minimum sentence (not less than) and it can also lay down the maximum sentence. If the minimum is laid down, the sentencing judge has no option but to give a sentence "not less than" that sentence provided for. Therefore, the words "not less than" occurring in Clause (i) to proviso (a) of Section 167(2) of the Cr.P.C. (and in other provisions) must be given their natural and obvious meaning which is to say, not below a minimum threshold and in the case of Section 167 of the Cr.P.C. these words must relate to an offence punishable with a minimum of 10 years imprisonment.

26. Of the two views expressed by this Court, we accept the view in Rajeev Chaudhary.

27. It is true that an offence punishable with a sentence of death or imprisonment for life or imprisonment for a term that may extend to 10 years is a serious offence entailing intensive and perhaps extensive investigation. It would therefore appear that given the seriousness of the offence, the extended period of 90 days should be available to the investigating officer in such cases. In other words, the period of investigation should be relatable to the gravity of the offence - understandably so. This could be contrasted with an offence where the maximum punishment under the IPC or any other penal statute is (say) 7 years, the offence being not serious or grave enough to warrant an extended period of 90 days of investigation. This is certainly a possible view and indeed the Cr.P.C. makes a distinction in the period of investigation for the purposes of 'default bail' depending on the gravity of the offence. Nevertheless, to avoid any uncertainty or ambiguity in interpretation, the law was enacted with two compartments. Offences punishable with imprisonment of not less than ten years have been kept in one compartment equating them with offences punishable with death or imprisonment for life. This category of offences undoubtedly calls for deeper investigation since the minimum punishment is pretty stiff. All other offences have been placed in a separate compartment, since they provide for a lesser minimum sentence, even though the maximum punishment could be more than ten years imprisonment. While such offences might also require deeper investigation (since the maximum is quite high) they have been kept in a different compartment because of the lower minimum imposable by the sentencing court, and thereby reducing the period of incarceration during investigations which must be concluded expeditiously. The cut-off, whether one likes it or not, is based on the wisdom of the Legislature and must be respected.

Discussion from personal liberty perspective

28. We may also look at the entire issue not only from the narrow interpretational perspective but from the perspective of personal liberty. Ever since 1898, the legislative intent has been to conclude investigations within twenty-four hours. This intention has not changed for more than a century, as the marginal notes to Section 167 of the Cr.P.C. suggest. However, the Legislature has been pragmatic enough to appreciate that it is not always possible to complete investigations into an offence within twenty-four hours.

Therefore initially, in the Cr.P.C. of 1898, a maximum period of 15 days was provided for completing the investigations. Unfortunately, this limit was being violated through the subterfuge of taking advantage of Section 344 of the Cr.P.C. of 1898. The misuse was recognized in the 41st Report of the Law Commission of India and consequently the Law Commission recommended fixing a maximum period of 60 days for completing investigations and that recommendation came to be enacted as the law in the Cr.P.C. of 1973. Subsequently, this period was also found to be insufficient for completing investigations into more serious offences and, as mentioned above, the period for completing investigations was bifurcated into 90 days for some offences and 60 days for the remaining offences.

29. Notwithstanding this, the basic legislative intent of completing investigations within twenty-four hours and also within an otherwise time-bound period remains unchanged, even though that period has been extended over the years. This is an indication that in addition to giving adequate time to complete investigations, the Legislature has also and always put a premium on personal liberty and has always felt that it would be unfair to an accused to remain in custody for a prolonged or indefinite period. It is for this reason and also to hold the investigating agency accountable that time limits have been laid down by the Legislature. There is a legislative appreciation of the fact that certain offences require more extensive and intensive investigations and, therefore, for those offences punishable with death or with imprisonment for life or a minimum sentence of imprisonment for a term not less than 10 years, a longer period is provided for completing investigations.

30. The need to expeditiously conclude investigations has been discussed from time to time over the years and the view has been that as far as practicable, the investigating agency should be distinct from the police staff assigned to the enforcement of law and order. This was the view expressed (in 1958) in the 14th Report of the Law Commission of India as reflected in its ***154th Report (in 1996)[6].***

31. In the 154th Report, the Law Commission noted that the unanimous opinion of members of the Bench and the Bar, prosecuting agencies and senior police officers during legal workshops held at various places was that the investigation of serious offences punishable with a sentence of 7 years or more should invariably be undertaken by senior officers. The Law Commission concluded, as a result of these extensive discussions, that it was desirable to separate the investigating police from the law and order police and as many as seven reasons were given for arriving at this conclusion in Chapter II of the Report.

32. Even this Court had occasion to consider this issue and looked into several reports including those of the National Police Commission in *Prakash Singh v. Union of India*[7]. In paragraphs 20 and 21 of the decision, this Court noted that the Home Minister, all the commissions and committees have concluded that there is an urgent need for police reforms and that there is convergence of views on the need, inter alia, to separate investigation work from law and order. Such views and opinions over a prolonged period have prompted the Legislature for more than a century to ensure expeditious conclusion of investigations so that an accused person is not unnecessarily deprived of his or her personal liberty by remaining in

prolonged custody for an offence that he or she might not even have committed. In our opinion, the entire debate before us must also be looked at from the point of view of expeditious conclusion of investigations and from the angle of personal liberty and not from a purely dictionary or textual perspective as canvassed by learned counsel for the State.

Default bail as an indefeasible right

33. It was submitted by learned counsel for the State that the charge sheet having been filed against the petitioner on 24th January, 2017 the indefeasible right of the petitioner to be now released on 'default bail' gets extinguished and the petitioner must apply for regular bail.

34. What is forgotten is that the indefeasible right for 'default bail' accrued to the petitioner when the period of 60 days for completing the investigation and filing a charge sheet came to an end on 3rd or 4th January, 2017 and that the indefeasible right continued till 24th January, 2017. The question is whether during this interregnum the petitioner was entitled to 'default bail' or not? Ordinarily, the answer would be "yes" but in the present case, the petitioner was not granted bail and a charge sheet was filed against him on 24 th January, 2017. Was his indefeasible right completely taken away?

35. Our attention was drawn to the decision of the Constitution Bench in *Sanjay Dutt v. State*[8] In paragraph 46 of the Report it was conceded by learned counsel appearing for the accused that the indefeasible right is enforceable only up to the filing of a charge sheet or challan and does not survive after the charge sheet or challan is filed in the court against him. This submission was not refuted by but agreed to by the learned Additional Solicitor General appearing for the State. The submission made by both the learned counsels was based on an interpretation of the decision of this Court in *Hitendra Vishnu Thakur v. State of Maharashtra*[9] which was a case under the Terrorist and Disruptive Activities (Prevention) Act, 1987.

36. While dealing with this common stance, the Constitution Bench in Sanjay Dutt made it clear in paragraph 48 of the Report that the indefeasible right accruing to the accused is enforceable only prior to the filing of the charge sheet and it does not survive or remain enforceable thereafter, if already not availed of. In other words, the Constitution Bench took the view that the indefeasible right of 'default bail' continues till the charge sheet or challan is filed and it gets extinguished thereafter. This is clear from the conclusion stated by the Constitution Bench in paragraph 53(2)(b) of the Report. This reads as follows:

> "(2)(b) The "indefeasible right" of the accused to be released on bail in accordance with Section 20(4)(bb) of the TADA Act read with Section 167(2) of the Code of Criminal Procedure in default of completion of the investigation and filing of the challan within the time allowed, as held in Hitendra Vishnu Thakur is a right which enures to, and is enforceable by the accused only from the time of default till the filing of the challan and it does not survive or remain enforceable on the challan being filed. If the accused applies for bail under this provision on expiry of the period of 180 days or the extended period, as the case may be, then he has to be released on bail forthwith. The accused, so released on bail may be arrested and committed to custody

according to the provisions of the Code of Criminal Procedure. The right of the accused to be released on bail after filing of the challan, notwithstanding the default in filing it within the time allowed, is governed from the time of filing of the challan only by the provisions relating to the grant of bail applicable at that stage."

37. This Court had occasion to review the entire case law on the subject in *Union of India v. Nirala Yadav*[10] In that decision, reference was made to *Uday Mohanlal Acharya v. State of Maharashtra*[11] and the conclusions arrived at in that decision. We are concerned with conclusion No. 3 which reads as follows:

"(3) On the expiry of the said period of 90 days or 60 days, as the case may be, an indefeasible right accrues in favour of the accused for being released on bail on account of default by the investigating agency in the completion of the investigation within the period prescribed and the accused is entitled to be released on bail, if he is prepared to and furnishes the bail as directed by the Magistrate."

38. This Court also dealt with the decision rendered in Sanjay Dutt and noted that the principle laid down by the Constitution Bench is to the effect that if the charge sheet is not filed and the right for 'default bail' has ripened into the status of indefeasibility, it cannot be frustrated by the prosecution on any pretext. The accused can avail his liberty by filing an application stating that the statutory period for filing the charge sheet or challan has expired and the same has not yet been filed and therefore the indefeasible right has accrued in his or her favour and further the accused is prepared to furnish the bail bond.

39. This Court also noted that apart from the possibility of the prosecution frustrating the indefeasible right, there are occasions when even the court frustrates the indefeasible right. Reference was made to *Mohamed Iqbal Madar Sheikh v. State of Maharashtra*[12] wherein it was observed that some courts keep the application for 'default bail' pending for some days so that in the meantime a charge sheet is submitted. While such a practice both on the part of prosecution as well as some courts must be very strongly and vehemently discouraged, we reiterate that no subterfuge should be resorted to, to defeat the indefeasible right of the accused for 'default bail' during the interregnum when the statutory period for filing the charge sheet or challan expires and the submission of the charge sheet or challan in court.
Procedure for obtaining default bail

40. In the present case, it was also argued by learned counsel for the State that the petitioner did not apply for 'default bail' on or after 4th January, 2017 till 24th January, 2017 on which date his indefeasible right got extinguished on the filing of the charge sheet. Strictly speaking this is correct since the petitioner applied for regular bail on 11th January, 2017 in the Gauhati High Court - he made no specific application for grant of 'default bail'. However, the application for regular bail filed by the accused on 11th January, 2017 did advert to the statutory period for filing a charge sheet having expired and that perhaps no charge sheet had in fact being filed. In any event, this issue was argued by learned counsel for the petitioner in the High Court and it was considered but not accepted by the High Court. The High Court did not reject the submission on the ground of maintainability but on merits. Therefore it is

not as if the petitioner did not make any application for default bail - such an application was definitely made (if not in writing) then at least orally before the High Court. In our opinion, in matters of personal liberty, we cannot and should not be too technical and must lean in favour of personal liberty. Consequently, whether the accused makes a written application for 'default bail' or an oral application for 'default bail' is of no consequence. The concerned court must deal with such an application by considering the statutory requirements namely, whether the statutory period for filing a charge sheet or challan has expired, whether the charge sheet or challan has been filed and whether the accused is prepared to and does furnish bail.

41. We take this view keeping in mind that in matters of personal liberty and Article 21 of the Constitution, it is not always advisable to be formalistic or technical. The history of the personal liberty jurisprudence of this Court and other constitutional courts includes petitions for a writ of habeas corpus and for other writs being entertained even on the basis of a letter addressed to the Chief Justice or the Court.

42. In *Sunil Batra II v. Home Secretary, Delhi Administration*[13] this Court accepted a letter, which was treated as petition, written by a prisoner in Tihar Jail, Delhi complaining of inhuman torture inflicted on another prisoner by the Jail Warder. In *Hussainara Khatoon v. State of Bihar*[14] a number of writ petitions, some by way of a letter, were grouped together and treated as habeas corpus petitions. In *Rubabbuddin Sheikh v. State of Gujarat*[15] the brother of the deceased wrote a letter to the Chief Justice of India complaining of a fake encounter and subsequent disappearance of his sister-in-law. This was treated as a habeas corpus petition. In *Kishore Singh Ravinder Dev v. State of Rajasthan*[16] the petitioners sent a telegram to a learned judge of this Court complaining of solitary confinement of prisoners. The telegram was treated as a habeas corpus petition and the concerned persons were directed to be released from solitary confinement. In *Paramjit Kaur (Mrs.) v. State of Punjab*[17] a telegram received at the residential office of a learned judge of this Court alleging an incident of kidnapping by the police was treated as a habeas corpus petition. In *Bandhua Mukti Morcha v. Union of India*[18] a petition addressed to a learned judge of this Court relating to the inhumane and intolerable conditions of stone quarry workers in many States and how many of them were bonded labour was treated as a writ petition on the view that the "Constitution-makers deliberately did not lay down any particular form of proceeding for enforcement of a fundamental right nor did they stipulate that such proceeding should conform to any rigid pattern or straight-jacket formula". In *People's Union for Democratic Rights v. Union of India*[19] a letter addressed to a learned Judge of this Court concerning violation of various labour laws in the construction projects connected to the Asian Games was treated as a writ petition. In *Dr. Upendra Baxi (I) v. State of Uttar Pradesh*[20] a letter relating to inhuman conditions in the Agra Protective Home for Women was treated as a writ petition and in *Sheela Barse v. State of Maharashtra*[21] a letter addressed by a journalist complaining of custodial violence against woman prisoners in Bombay was treated as a writ petition. These cases are merely illustrative of the personal liberty jurisprudence of this Court and in matters pertaining to Article 21 of the Constitution of India this Court has consistently taken the view that it is not advisable to be ritualistic and formal. However, we must make it

clear that we should not be understood to suggest that procedures must always be given a go-by - that is certainly not our intention.

Duty of the Courts

43. This Court and other constitutional courts have also taken the view that in the matters concerning personal liberty and penal statutes, it is the obligation of the court to inform the accused that he or she is entitled to free legal assistance as a matter of right. In *Khatri v. State of Bihar* [22] the Judicial Magistrate did not provide legal representation to the accused since they did not ask for it. It was held by this Court that this was unacceptable and that the Magistrate or the Sessions Judge before whom an accused appears must be held under an obligation to inform the accused of his or her entitlement to obtain free legal assistance at the cost of the State. In *Suk Das v. Union Territory of Arunachal Pradesh*[23] the accused was tried and convicted without legal representation, due to his poverty. He had not applied for legal representation but notwithstanding this, this Court held that the trial was vitiated and the sentence awarded was set aside, particularly since the accused was not informed of his entitlement to free legal assistance, nor was an inquiry made from him whether he wanted a lawyer to be provided at State expense. In *Rajoo @ Ramakant v. State of Madhya Pradesh*[24] the High Court dismissed the appeal of the accused without enquiring whether he required legal assistance at the expense of the State even though he was unrepresented. Relying on Khatri and Suk Das this Court remanded his appeal to the High Court for re-hearing after giving an opportunity to the accused to take legal assistance. Finally, in *Mohammed Ajmal Mohammad Amir Kasab v. State of Maharashtra*[25] this Court relied on Khatri and held that in paragraph 474 of the Report as follows:

> . it is the duty and obligation of the Magistrate before whom a person accused of committing a cognizable offence is first produced to make him fully aware that it is his right to consult and be defended by a legal practitioner and, in case he has no means to engage a lawyer of his choice, that one would be provided to him from legal aid at the expense of the State. The right flows from Articles 21 and 22(1) of the Constitution and needs to be strictly enforced. We, accordingly, direct all the Magistrates in the country to faithfully discharge the aforesaid duty and obligation and further make it clear that any failure to fully discharge the duty would amount to dereliction in duty and would make the Magistrate concerned liable to departmental proceedings."

44. Strong words indeed. That being so we are of the clear opinion that adapting this principle, it would equally be the duty and responsibility of a court on coming to know that the accused person before it is entitled to 'default bail', to at least apprise him or her of the indefeasible right. A contrary view would diminish the respect for personal liberty, on which so much emphasis has been laid by this Court as is evidenced by the decisions mentioned above, and also adverted to in Nirala Yadav.

Application of the law to the petitioner

45. On 11th January, 2017 when the High Court dismissed the application for bail filed by the petitioner, he had an indefeasible right to the grant of 'default bail' since the statutory period of 60 days for filing a charge sheet had expired, no charge sheet or challan had been filed against him (it was filed only on 24th January, 2017) and the petitioner had orally applied for 'default bail'. Under these circumstances, the only course open to the High Court on 11th January, 2017 was to enquire from the petitioner whether he was prepared to furnish bail and if so then to grant him 'default bail' on reasonable conditions. Unfortunately, this was completely overlooked by the High Court.

46. It was submitted that as of today, a charge sheet having been filed against the petitioner, he is not entitled to 'default bail' but must apply for regular bail - the 'default bail' chapter being now closed. We cannot agree for the simple reason that we are concerned with the interregnum between 4th January, 2017 and 24th January, 2017 when no charge sheet had been filed, during which period he had availed of his indefeasible right of 'default bail'. It would have been another matter altogether if the petitioner had not applied for 'default bail' for whatever reason during this interregnum. There could be a situation (however rare) where an accused is not prepared to be bailed out perhaps for his personal security since he or she might be facing some threat outside the correction home or for any other reason. But then in such an event, the accused voluntarily gives up the indefeasible right for default bail and having forfeited that right the accused cannot, after the charge sheet or challan has been filed, claim a resuscitation of the indefeasible right. But that is not the case insofar as the petitioner is concerned, since he did not give up his indefeasible right for 'default bail' during the interregnum between 4 th January, 2017 and 24th January, 2017 as is evident from the decision of the High Court rendered on 11th January, 2017. On the contrary, he had availed of his right to 'default bail' which could not have been defeated on 11th January, 2017 and which we are today compelled to acknowledge and enforce.

47. Consequently, we are of opinion that the petitioner had satisfied all the requirements of obtaining 'default bail' which is that on 11th January, 2017 he had put in more than 60 days in custody pending investigations into an alleged offence not punishable with imprisonment for a minimum period of 10 years, no charge sheet had been filed against him and he was prepared to furnish bail for his release, as such, he ought to have been released by the High Court on reasonable terms and conditions of bail.

48. It may be mentioned that learned counsel for the petitioner had contended that the extended period of 90 days for filing a charge sheet would not apply to the petitioner since he is not covered by the provisions of the Lokpal and Lokayuktas Act, 2013 and therefore the maximum sentence that could be awarded to him would be 7 years under the Prevention of Corruption Act, 1988. This argument of desperation is recorded only to be summarily rejected. Even if the petitioner is not within the purview of the Lokpal and Lokayuktas Act, 2013 he is certainly not outside the purview of the PC Act and can be prosecuted and punished for a violation of Section 13(1) thereof. There is absolutely no cogent reason for excluding the petitioner from the rigours of the PC Act as amended by the Lokpal and Lokayuktas Act, 2013.

Conclusion

49. The petitioner is held entitled to the grant of 'default bail' on the facts and in the circumstances of this case. The Trial Judge should release the petitioner on 'default bail' on such terms and conditions as may be reasonable. However, we make it clear that this does not prohibit or otherwise prevent the arrest or re-arrest of the petitioner on cogent grounds in respect of the subject charge and upon arrest or re-arrest, the petitioner is entitled to petition for grant of regular bail which application should be considered on its own merit. We also make it clear that this will not impact on the arrest of the petitioner in any other case.

50. We allow the petition and set aside the judgment and order of the High Court.

51. The companion petition, being S.L.P. (Crl.) No. 2176 of 2017 is rendered infructuous and is dismissed as such.

52. By way of a footnote, we may add that it is time that the reports of the Law Commission of India and the decision of this Court in Prakash Singh are given very serious thought and in addition a greater degree of professionalism is introduced in investigations into offences along with scientific methods and techniques of investigation and the use of technology.

JUDGMENT

Prafulla C.Pant,J.,

53. I have the benefit of going through the draft judgment authored by My Lord Hon'ble Justice Madan B. Lokur. Agreeing with the importance of right of personal liberty, with great regard to His Lordship, I beg to differ on the interpretation of Section 167(2)(a)(i) of the Code of Criminal Procedure 1973, and in the facts and circumstances of the case at hand, in my opinion, both the appeals are liable to be dismissed. I express my opinion in the matter as under:-

54. These appeals are directed against the order dated 11.01.2017, passed by the High Court of Guwahati in Bail Application No.23/2017 and the order dated 13.2.2017 in Bail Application No.136/2017, wherein the bail applications filed by the appellant under Section 439 of the Code of Criminal Procedure 1973, have been rejected.

55. Prosecution story in short is that the appellant - Rakesh Kumar Paul was working as the Chairman of the Assam Public Service Commission (APSC) from 11.12.2013. On 27.10.2016 an FIR No. 936 of 2016 was lodged by one Dr. Angshumita Gogoi for offences under Sections 7, 13(1)(b)(2) of the Prevention of Corruption Act 1988 (For short "PC Act") at Police Station Dibrugarh, Assam stating that one Mr. Nabakanta Patir contacted her and asked her to pay Rs.10,00,000/- (Rupees ten lacs only) to him for recruiting her as Dental Surgeon in the selection conducted by APSC. Upon her intimation to the police, a trap was laid up, wherein Nabakanta Patir was apprehended in his residential premises located at Circuit House Road while he was receiving the amount from the informant. He was arrested

and it was found that there was a network of such illegal activities to recruit persons for government service in connivance and conspiracy of other persons. Investigation revealed that the appellant being the Chairman of the APSC was involved in running a network to recruit people to government services in the state in connivance and conspiracy with others. He was found having direct access to the said Nabakanta Patir. During the search at the residence of the appellant, cash amounting to Rs.10,00,000/- (Rupees ten lacs only) answer scripts of the APSC Examination were recovered which contained extra marks bearing the signature of the invigilator including the APSC tabulation sheet, master paper of answer scripts, draft copy of APSC answer booklets including instructions part from a particular printing press of the brother of the appellant. The Papers were supposed to be printed at the Government Printing Press as per the APSC provisions, but they were made to be printed at the private press without any authority. Telephonic conversation records revealed that Nabakanta Patir was in contact with a candidate regarding appointment for the post of BDO also for the year 2016. Some other recoveries were also made from his office and the printing press. The appellant was arrested on 4.11.2016 and was produced before the Judge, Special Court, Guwahati on 5.11.2016, wherein he was remanded to custody.

56. The present appellant first preferred a regular bail application before the Special Judge which was dismissed on 20.12.2016. Thereafter, in January 2017, he filed Bail Application No. 23 of 2017 before the High Court of Guwahati under Section 439 of the Code of Criminal Procedure 1973 (for short "the Code"). It is significant to note that this application was for regular bail on merits as is evident from a perusal of the same. As such, there was no ground taken in the petition to enlarge the appellant on default bail for non filing of chargesheet within a period of sixty days. This issue will be addressed later in the judgment. The bail application came to be disposed on 11.1.2017. It is to be noted that the arguments made before the High Court were predominantly based on the ground that the accused was entitled to bail under Section 167(2) of the code since the chargesheet was not filed within a period of sixty days. The counsel for the accused argued that since the maximum punishment u/s 13(2) of the PC Act 1988 was seven years, the charge sheet was to be filed within sixty days, i.e. upto 04.01.2017, but since chargesheet was not filed, the accused is entitled to bail under Section 167(2) of the Code. It was also argued that assuming the PC Act was amended by the Lokpal and Lokayuktas Act, 2013 the punishment under Section 13(2) as amended will extend to 10 years and in that case also the chargesheet had to be filed within 60 days. He placed reliance on the judgment of the decision of this court in the case of *Rajeev Chaudhary vs. State (NCT) of Delhi*[26].

57. Counsel for the State contested the bail application before the High Court by stating that upon the amendment of Section 13(2) of the PC Act 1988 by the Lokpal and Lokayuktas Act, 2013 which came into effect from 16.1.2014, the maximum punishment imposable is ten years imprisonment and thus the time period for filing charge sheet is ninety days. It was also contested on merits. The High Court vide impugned order dated 11.1.2017 rejected the bail application by holding that in the present case, since the offence under Section 13(2) of the PC Act (as amended by the Lokpal and Lokayuktas Act, 2013) is punishable with imprisonment which may extend to 10 years imprisonment, the provisions of Section 167(2)(a)(i) of the Code would be applicable and the accused is not entitled to his bail due to

the default of the prosecution in not filing the chargesheet within a period of sixty days under Section 167(2)(a)(ii) of the Code. The High Court did not consider it a fit case to grant bail on the merits either.

58. Thereafter, on 24.01.2017, the police filed charge sheet in FIR No. 936 of 2017 for the offences under Sections 7, 13(1)(a)(b) (d) and 13(2) of the PC Act and Sections 120B, 420, 462, 468, 471, 477(A), 201 of the Indian Penal Code (IPC) against the appellant and other co-accused. After filing the chargesheet, the appellant moved bail application No.136 of 2017 before the High Court of Guwahati seeking bail on merits. This bail application also came to be rejected on 13.2.2017. These two orders of the High Court dated 11.1.2017 and 13.2.2017 are challenged before this Court in these present appeals.

59. Heard Shri Abhishek Manu Singhvi, senior counsel for the appellant and Shri Mukul Rohtagi, senior counsel for the State of Assam.

60. The primary argument advanced by the learned counsel for the appellant is that the default of the Investigating Agency in not filing the chargesheet within sixty days entitles the accused to be released as per the provision of Section 167(2) of the Code. It is contended that the maximum punishment for the offences for which the chargesheet has been filed against the accused is seven years. The PC Act was amended by the Lokpal and Lokayuktas Act, 2013 primarily by enhancing the punishments for certain offences, to be investigated and prosecuted by Lok Pal or Lokayukta. Learned Counsel submits that such amendment of the PC Act 1988 by the Lokpal and Lokayuktas Act 2013 was not permissible in respect of offences tried by ordinary Special Courts. Further it was argued that, assuming that the Act stood amended and the punishment for the offence under Section 13(2) of the PC Act was amended and the maximum punishment stood extended to ten years, the Investigating agency was still required to file the charge sheet within sixty days and in default of which the accused would be entitled to bail under Section 167(2) of the Code. He placed reliance on a decision of this Court in the case of Rajeev Chaudhary vs. State (NCT) of Delhi (supra) wherein the court held that for the offence under Section 386 IPC which is punishable with imprisonment upto ten years, the chargesheet was required to be filed within sixty days.

61. Mr. Mukul Rohatgi argued that power of the parliament to amend the PC Act 1988 by way of the Lokpal and Lokayuktas Act, 2013 cannot be questioned. He further submitted that the Amendment came into force with effect from 16.1.2014 as recognised by this court in the case of *Kiran Chander Asri vs. State of Haryana*[27]. Reference is also made to the case of *Bhupinder Singh and ors. vs. Jarnail Singh and Another* [28] to contend that, when minimum as well as maximum sentences are imposable, it cannot be said that only minimum sentences are imposable and not the maximum sentence. While reiterating the reasoning given by the High Court, he further conteded that, in the instant case, the accused had only approached the High Court for regular bail under Section 439 of the Code wherein no ground of default bail on the ground of not filing chargesheet within sixty days, was taken in the application. It is only during the arguments, the ground for non compliance of Section 167(2) was taken by the counsel before the High Court. He argued that this cannot be said to be in conformity with the procedure provided under Section 167(2) of the Code for availing the bail on the

default of the investigation to file the charge sheet. Further, since the charge sheet came to be filed on 24.01.2017, he is no longer entitled to such relief. On merits it was argued that it is not a fit case for bail.

62. At the outset, it may be stated that the argument taken by the counsel for the accused that the Amendment made to the Prevention of Corruption Act 1988 by the Lokpal and Lokayukta Act, 2013 has not been enforced, has no legs to stand on. The Amendment has been enforced with effect from 16.01.2014 which has been accepted by this Court in the case of Kiran Chander Asri vs. State of Haryana (supra). The challenge to the power of the parliament to amend the provisions of the Prevention of Corruption Act 1988 by way of the Lokpal and Lokayuktas Act, 2013 is neither substantiated nor further pressed and is thus liable to be rejected.

63. The three main questions that arise in these appeals for our consideration are as under:

> "I. Whether in a case regarding offence for which the punishment imposable may extend up to ten years, the accused is entitled to bail under Section 167(2) of the Code of Criminal Procedure 1973 due to default on the part of investigating agency in not filing the charge sheet within sixty days?
>
> II. Whether the appellant is entitled to default bail under Section 167(2) of the Code though he has not made any application (oral or written) under section 167(2) of the Code before the Magistrate (or Special Judge), but has instead argued orally without pleadings in a pending regular bail application filed under Section 439 of the Code before the High Court?
>
> III. Whether the appellant is entitled to bail on merits?
>
> Answer to question I:

64. To answer this question, I shall briefly trace out the history of the provision under Section 167(2)(a) of the Code. The erstwhile Code of Criminal Procedure 1898 did not contain any such provision for grant of bail on default of the investigating agency in not filing the charge sheet within a specific period of time. When the Code of Criminal Procedure 1973 was enacted to replace the Criminal Procedure Code of 1898, it was felt that the investigation into offences ought to be carried out in a time bound manner so as to provide speedy justice and to protect the life and liberty of the accused persons who are remanded to custody during the pendency of investigation. Thus the provision of Section 167(2)(a) was introduced in the Code of Criminal Procedure 1973, wherein the accused was entitled to get bail on default of the investigating agency in not filing the charge sheet within sixty days of remand. Thereafter, in the year 1978, the Code of Criminal Procedure (Amendment) Act 1978 (Act 45 of 1978) was passed, making several amendments to the Code of Criminal Procedure, 1973. One such amendment was a classification within the proviso to section 167(2)(a) by authorising the detention of upto ninety days in cases punishable with death, imprisonment for life or imprisonment for a term not less than ten

years; and authorising detention upto sixty days where the investigation relates to other offences.

65. The text of Section 167 (2) of the Code as amended and as it stands today is reproduced below:

> "167- Procedure when investigation cannot be completed in twenty-four hours.
>
> (1) xxxxxxxxxx
>
> (2) Provided that-
>
> (a)The Magistrate may authorize the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding-
>
> (i) Ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;
>
> (ii) Sixty days, where the investigation relates to any other offence."

66. The question that arises in the instant case is whether for the offence which is punishable with imprisonment for a term which may extend to ten years, the accused will be entitled to be released on bail for default in not filing charge sheet within sixty days from the date of remand. The learned counsel of the accused has relied on the case of Rajeev Chaudhary (supra) wherein a Division Bench of this Court was dealing with the permissible period of custody for an offence under Section 386 IPC, which is punishable with imprisonment which may extend to ten years.

67. In Rajeev Ch.audh.ary (supra) it has been observed that only if the minimum prescribed punishment is ten years imprisonment or more, then the requirement of completing investigation may extend to ninety days. But in my opinion when S.167(2) of Code was amended, there was no such category of offences in the Indian Penal Code where minimum sentence of ten years imprisonment was required to be imposed in 1978 without alternative prescribed sentence of imprisonment for life. For example: offences punishable under Sections 121A, 122, 128, 131, 194, 304 (part I), 313, 314, 326, 329, 371, 394, 395, 409, 412, 413, 436, 449, 450, 459, 460 of the IPC provide for a punishment of life imprisonment, also and as such the expression - 'or imprisonment for a term not less that ten years", does not help any determine for the purposes of Section 167(2) of the Code in the above category of cases as the alternative punishment of imprisonment for life already covered in the said clause. Similarly, offences under Sections 132, 305 and 396 are punishable with death, or life imprisonment also. In my view if the legislature intended to exclude the offences for which the minimum imprisonment was ten years, it could have used the words "or imprisonment for a term more than ten years". Thus the argument that ninety days period does not cover the

cases where maximum imposable sentence is ten years can not be accepted. It is also relevant to mention here that there seems to be some contusion in the disposition of the Rajeev Chaudhary case (supra) wherein the appellant in that Case, Rajeev Chaudhary, was an accused, and had in fact approached this Court challenging the decision of the High Court of Delhi passed in Cr.M.(M.) No.2532 of 1999 (reported in 2001 Cri. L. J. 2023) wherein the High Court had held that the accused was not entitled to bail at the expiry of sixty days in custody for the offence under Section 386 IPC which was punishable with imprisonment which may extend to ten years. If this Court in the said case intended that Section 386 IPC is not covered under Section 167(2)(a)(i), then the appeal would have been allowed, but, in fact, the appeal of the accused was dismissed by this court.

68. In the case of Bhupinder Singh vs. Jarnail Singh (supra), this Court was faced with the question regarding period when the accused would be entitled to bail on default in filing charge sheet in a case for offence under Section 304B IPC. The offence under Section 304B is punishable with imprisonment of not less than seven years but may extend to imprisonment for life. While holding that the permissible period in filing challan is ninety days in a case for offence under Section 304B IPC, the court observed that the significant word used in the proviso is "punishable". And since life imprisonment was a punishable sentence, the permissible period for filing challan was for the offence under Section 304B IPC was held to be ninety days. While holding so, the Court observed as under:

> "Where minimum and maximum sentences are prescribed both are imposable depending on the facts of the cases. It is for the Court, after recording conviction, to impose appropriate sentence. It cannot, therefore, be accepted that only the minimum sentence is imposable and not the maximum sentence. Merely because minimum sentence is provided that does not mean that the sentence imposable is only the minimum sentence "
>
> (emphasis supplied)

69. The main ambiguity in the interpretation of the provision arises in the use of the words "not less than ten years" in Section 167(2)(a)(i) of the Code. The legislative drafts on the amendment of this provision do not throw much light on the expression "not less than ten years" used in the provision. But while answering the criticism to the amendment at the Rajya Sabha, the then Minister of State in the Ministry of Home Affairs - Shri S.D.Patil, who had moved the bill in both the houses, made the following statement which may help us to know the kinds of cases that were intended to be included in the ninety days category. The statement is as under:

> "Then, Sir, a lot of criticism has been levelled against section 167 as to why the investigation is not completed within 60 days. There is a provision for releasing a person on bail. Why do we want to extend it by thirty days? We have made two categories. Ninety days are applicable where the investigation relates to an offence punishable with death,- there are eight offences punishable with death--- Imprisonment for life-we have 48 offences punishable with imprisonment for life---

> or imprisonment for a term of not less than ten years and we have 36 offences punishable with this sentence. Only in such cases which are complicated in nature investigation takes a longer time. To complete this kind of investigation, one has to go through other states as well. This has been our ***experience...***"[29]

70. If we look at the figures of 8, 48 and 36, referred to in the aforementioned statement, we may be able to cull out the intention of the legislature in classifying the offences. From the first schedule of the Code of Criminal Procedure 1973 (as it existed in 1978) read with whole of I.P.C, it can be gathered that, the "eight" cases punishable with death were – Sections 121, 132, 194(part II), 302, 303 (struck down), 305, 307 (part Rajya Sabha Debates Vol CVII Nos.13-25, 6 to 25 December 1978, (6th December), pg III), 396 IPC; the forty eight offences punishable with life imprisonment were - Sections 121A, 122, 124A, 125, 128, 130, 131, 194 (part I), 222, 225 (part V), 232, 238, 255, 304 (part I), 307 (part II), 311, 313, 314 (part II), 326, 329, 363A (part II), 364, 371, 376, 377, 388 (part II), 389 (part II), 394, 395, 400, 409, 412, 413, 436, 437, 438, 449, 459, 460, 467, 472, 474 (part II), 475, 477, 489A, 489B, 489D and 511 (part I) IPC; and the thirty six offences refer to Sections 119 (part II), 123, 235 (part II), 240, 251, 304 (part II), 306, 307 (part I), 314, 315, 316, 327, 328, 331, 333, 363A (part I), 366, 366A, 366B, 367, 372, 373, 382, 386, 388 (part I), 389 (part I), 392 (part I), 399, 437, 439, 450, 454 (part II), 455, 493 and 495 IPC.

71. A perusal of the figure of eight, forty eight, and thirty six mentioned in his speech by the then Hon'ble Minister of State in the Ministry of Home Affairs, Shri S.D.Patil, in the light what I have mentioned in preceding para shows that the Hon'ble Minister classified cases which are "punishable" with a particular sentence as a separate class. His statistics shows that he had classified the cases punishable with death sentence in one group, cases punishable with life imprisonment were classified in another group and cases punishable with imprisonment of upto ten years were classified in the third group. The reference he was making to the 36 cases that fall in the category of "imprisonment of not less than ten years" in section 167(2)(a)(i) of the Code, were in fact the offences for which the punishment was of imprisonment for a period which may extend to ten years. It can further be inferred that, when he stated "...or imprisonment for a term of not less than ten years and we have 36 offences punishable with this sentence...", he referred to offences wherein ten years imprisonment was also an imposable punishment.

72. From the above analogy, I am of the opinion that the intention of the legislature was that if an offence was punishable with imprisonment upto ten years, then it falls within the provision of Section 167(2)(a)(i) of the Code, and the permissible period for investigation is ninety days. The intention of the Legislature in extending the permissible time period from sixty days to ninety days for investigation is to include the offences in which sentence awardable is at least ten years or more. Therefore, as discussed above, though the expression "not less than ten years" used in Section 167(2)(a) (i) of the Code has created some ambiguity, the real intention of the legislature seems to include all such offences wherein an imprisonment which may extend to ten years is an awardable sentence. In other words, for offences wherein the punishment may extend to ten years imprisonment, the permissible period for filing charge sheet shall be ninety days, and only after the period of ninety days,

the accused shall be entitled to bail on default for non filing of the charge sheet. (In the present case, admittedly the charge sheet is filed within ninety days). I may further add that, since the expression "not less than ten years" has caused ambiguity in interpretation, the best course for the legislature would be to clear its intention by using the appropriate words.
Answer to question II:

73. The second issue which requires to be addressed is whether the appellant is entitled to statutory bail under Section 167(2) of the Code though he has not made any application under Section 167(2) of the Code before the Magistrate (or Special Judge) prior to the filing of the charge sheet. The record of the case reveals that the appellant was arrested on 4.11.2016 and produced before the Magistrate on 5.11.2016 and he was remanded to custody for the first time. The period of sixty days for filing charge sheet expired on 04.01.2017. The charge sheet came to be filed on 24.1.2017. Initially the appellant had applied for regular bail before the Sessions Court which came to be rejected on 20.12.2016. Thereafter he moved bail application No. 23/2017 for bail under Section 439 of the Code before the High Court of Guwahati. This bail application was disposed on 11.01.2017 which was after sixty days of arrest, but prior to filing of charge sheet. A perusal of this bail application shows that this bail application was moved under Section 439 of the Code for regular bail on merits and not as a bail claiming the statutory right under Section 167 of the Code. In none of the grounds taken in the bail application, the appellant has pleaded for default bail as a result of non filing of the charge sheet. All the grounds urged are on merits. The prayer is also for regular bail. It appears that, prior to the time of hearing, the counsel for the appellant has realised that the accused was entitled for default bail under Section 167(2) and has taken the plea in the oral arguments in the High Court that since sixty days for filing charge sheet has expired, he is entitled to bail as matter of right under Section 167(2) of the Code. The question thus arises, whether such application on merits can be equated to be an application seeking enforcement of statutory right under Section 167(2) of the Code and whether such practice of taking such oral arguments directly before the High Court in a pending regular bail application without having taken such grounds in the application or having approached the Magistrate (or Special Court) should be entertained.

74. The legal position regarding bail under Section 167(2) of the Code was cemented by a Constitution Bench of this Court which has inter alia held in the case of *Sanjay Dutt vs. State through C.B.I., Bombay*[30] that:

> "...The "'indefeasible right" of the accused to be released on bail in accordance with Section 20(4)(bb) of the TADA Act read with Section 167(2) of the CrPC in default of completion of the investigation and filing of the challan within the time allowed, as held in Hitendra Vishnu Thakur vs. State of Maharashtra [(1994) 4 SCC 602], is a right which enures to, and is enforceable by the accused only from the time of default till the filing of the challan and it does not survive or remain enforceable on the challan being filed. If the accused applies for bail under this provision on expiry of the period of 180 days or the extended period, as the case may be, then he has to be released on bail forthwith. The accused, so released on bail may be arrested and committed to custody according to the provisions of the CrPC. The right of the

accused to be released on bail after filing of the challan, notwithstanding the default in filing it within the time allowed, is governed from the time of filing of the challan only by the provisions relating to the grant of bail applicable at that stage..."

75. In the case of *Uday Mohanlal Acharya vs. State of Maharashtra*[31] three Judge Bench of this Court had the occasion to determine when an accused can be said to have availed of his indefeasible right for being released on bail under the proviso to Section 167(2) of the Code of Criminal Procedure, if a challan is not filed within the period stipulated thereunder. The Court held in a majority of 2:1 that the indefeasible right is said to be availed at the time when an application is made for enforcement of the right under Section 167(2) of the Code and the accused offers to abide by the terms and conditions of bail. While holding so, the court, in para 11, interpreted the decision in *Dr. Bipin Shantilal Panchal vs. State of Gujarat*[32], a three Judge Bench decision of this Court, as under:

"In this case (Dr. Bipin Shantilal Panchal), the accused had not made application for enforcement of his right accruing under proviso to Section 167(2) of the Code. But raised the contention only in the Supreme Court. This Court, therefore, formulated the question thus - Whether the accused who was entitled to be released on bail under proviso to sub-section (2) of Section 167 of the Code, not having made an application when such right had accrued, can exercise that right at a later stage of the proceeding, and answered in the negative."

76. The requirement for making the application for seeking enforcement of the right under Section 167(2) has been recognised in several cases. In the case of *Mohamed Iqbal Madar Sheikh vs State of Maharashtra*[33], this court rejected the claim for statutory bail under Section 167(2) of the Code on the ground that no application was made on that ground. In para 11 of the Judgment the Court held as under:

"So far the facts of the present case are concerned, the appellant Nos. 1 to 6 were taken into custody on 16.1.1993. The charge-sheet was submitted on 30.8.1993; obviously beyond the statutory period under Section 20(4)(b). There is nothing on record to show that provisions of Section 20(4)(bb) were applied in respect of appellants. They had become entitled to be released on bail under proviso (a) to Section 167(2) of the Code read with Section 20(4)(b) of the TADA. But it is an admitted position that no application for bail on the said ground was made on behalf of the appellants. Unless applications had been made on behalf of the appellants, there was no question of their being released on ground of default in completion of the investigation within the statutory period. It is now settled that this right cannot be exercised after the charge-sheet has been submitted and cognizance has been taken, because in that event the remand of the accused concerned including one who is alleged to have committed an offence under TADA, is not under Section 167(2) but under other provisions of the Code."

[Emphasis supplied]

77. In the case of *Hitendra Vishnu Thakur and Others etc. etc. vs. State of Maharashtra and Others*[34], it was held in para 30 that:

> "In conclusion, we may (even at the cost of repetition) say that an accused person seeking bail under Section 20(4) has to make an application to the court for grant of bail on grounds of the 'default' of the prosecution and the court shall release the accused on bail after notice to the public prosecutor uninfluenced by the gravity of the offence or the merits of the prosecution case since Section 20(8) does not control the grant of bail under Section 20(4) of TADA and both the provisions operate in separate and independent fields.
>
> It is, however, permissible for the public prosecutor to resist the grant of bail by seeking an extension under Clause (bb) by filing a report for the purpose before the court. However, no extension shall be granted by the court without notice to an accused to have his say regarding the prayer for grant of extension under Clause (bb). In this view of the matter, it is immaterial whether the application for bail on ground of 'default' under Section 20(4) is filed first or the report as envisaged by Clause (bb) is filed by the public prosecutor first so long as both are considered while granting or refusing bail "
>
> [Emphasis supplied]

78. The law laid down as above shows that the requirement of an application claiming the statutory right under Section 167(2) of the Code is a prerequisite for the grant of bail on default. In my opinion, such application has to be made before the Magistrate for enforcement of the statutory right. In the cases under the Prevention of Corruption Act or other Acts where Special Courts are constituted by excluding the jurisdiction of the Magistrate, it has to be made before such Special Court. In the present case, for the reasons discussed, since the appellant never sought default bail before the court concerned, as such not entitled to the same.

Answer to question III:

79. Now, it is to be seen whether the appellant is entitled to bail on merits at this stage. Admittedly, the appellant was the Chairman of the APSC from 11.12.2013. The allegations against him are serious in nature and several recoveries appear to have been made from his residence and other places. The provisions of the APSC with regard to handling of the answer sheets and other procedural illegalities in dealing with the examination are alleged. A network of illegal activities is said to have been operating for huge amounts of illegal gratification. It is submitted by the state that the Investigating Officer has filed an application under Section 173(8) of the Code seeking permission to carry out further investigation as materials have been unearthed which indicates involvement of some other accused persons. It is further submitted that at least fourteen witnesses have deposed under Section 164 of the Code indicating that the appellant has demanded illegal gratification in lieu of one post or the other and also received the same.

80. In the case of *Nimmagadda Prasad vs. Central Bureau of Investigation,*[35] this Court, while rejecting bail in a case related to economic offences, has observed that:

> "While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations. It has also to be kept in mind that for the purpose of granting bail, the Legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the Court dealing with the grant of bail can only satisfy itself as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as a grave offence affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country."

81. I may hasten to add that in the present case, the allegations do not disclose merely an economic offence but it shows a transgression of the constitutional rights of the victims of the crime. The Chairman of the APSC has the responsibility on behalf of the State for enforcement of the Fundamental Rights of equality in matters of public employment enshrined under Articles 14 and 16 of the Constitution of India. If the allegations are found to be true, then the offence cannot merely be considered as an economic offence, but a fraud on the Constitution itself by the persons appointed to enforce it.

82. In the above circumstances, without expressing any views on the merits of the case pending before the trial court, looking into the nature of allegations, the role attributed to the appellant, the fact that further investigation regarding the offence is underway, possibility of tampering evidence and influencing witnesses, I am of the opinion that it is not a fit case for grant of bail at this stage even on merits.

83. Therefore both these appeals are liable to be dismissed, and are accordingly dismissed.

JUDGMENT

Deepak Gupta, J.,

84. I have had the privilege of going through the judgments authored by my learned brothers Madan B. Lokur and Prafulla C. Pant, JJ.

85. Since the facts of the case and the legislative history of Section 167 of the Code of Criminal Procedure (for short 'the Code') have been set out in detail in the two judgments of my learned brothers, I do not want to burden the file with unnecessary facts. The main issue is whether the petitioner, who is charged with an offence, which is punishable with imprisonment for a period ranging from 4 to 10 years is entitled to 'default bail' or 'statutory bail' in terms of Section 167(2) of the Code on completion of 60 days or not. The petitioner is a former Chairman of the Assam Public Service Commission. The allegation against him is that he used to take bribe from some candidates for recruiting them to the posts advertised and filled in by the Assam Public Service Commission (for short 'APSC'). A trap was laid and he was allegedly caught red-handed. Amongst other offences he is also charged of having committed an offence under Section 13(1)(d)(ii) of the Prevention of Corruption Act (for short 'PC Act').

86. The first submission of Mr. Abhishek Manu Singhvi, learned senior counsel, was that the amendments made to the PC Act whereby the sentence for committing offence under Section 13 has been increased from a minimum of one year to maximum of 7 years to a minimum of 4 years and maximum of 10 years is applicable only in those cases where the prosecution is launched under the provisions of Lokpal and Lokayuktas Act, 2013 (for short 'the Lokpal Act'). This argument is without any merit whatsoever. Section 58 of the Lokpal Act incorporates amendments in other statutes as mentioned in the Schedule. Amendments have been made to the Commission of Enquiry Act, 1952, The Delhi Special Police Act, the Prevention of Corruption Act, 1988, The Code of Criminal Procedure, 1973 and the Central Vigilance Commission Act, 2003. In my view, the amendments made to these five Acts by the Lokpal Act will apply regardless of the fact whether the prosecution has been launched under the Lokpal Act or under the provisions of any other law. I fully agree with my learned brothers that this submission has no force.

87. The petitioner was arrested on 04.11.2016 and was remanded to judicial custody on 05.11.2016. The period of 60 days of arrest would expire either on 03.01.2017 or 04.01.2017, which will make no difference, as far as this case is concerned. Period of 90 days will expire on 02.02.2017. It is also not disputed that the police filed charge-sheet on 24.01.2017. The petitioner had filed a regular bail application before the trial court, which was rejected on 20.12.2016. He moved an application in the High Court for grant of bail. In this bail application no specific prayer was made for grant of 'default bail'. However, the perusal of the impugned order dated 11.01.2017 whereby this bail application was rejected, clearly shows that main contention of the counsel for the petitioner was that the petitioner was entitled to grant of 'default bail' because 60 days had expired but this prayer did not find favour with the High Court, which was of the view that since the offence was punishable by imprisonment up to 10 years, the investigating agency was entitled to get 90 days to complete investigation and the accused could apply for grant of 'default bail' thereafter.
Two issues arise for consideration in this case:

> "(d) When an accused is charged with an offence in which the punishment imposable is up to 10 years, whether the accused is entitled to grant of bail in terms of Section

167(2) of the Code if the investigating agency does not file the charge-sheet within a period of 60 days.

(e) Whether an accused can be enlarged on bail under Section 167(2) even though he may not have made an application in writing under Section 167(2) of the Code but has orally argued that he is entitled to grant of 'default bail."

88. Before dealing with Section 167 of the Code, I would like to refer to Section 57, which provides that any person arrested by the police should not be detained for more than 24 hours unless an order is obtained from the magistrate under Section 167 of the Code. The Code was originally enacted in the year 1898. We must remember that at that time, the means of communication were very primitive; the means of telecommunications barely existed. Despite that, in the Code as originally enacted, the police was expected to complete investigation within 15 days and the magistrate did not have any jurisdiction to pass an order detaining him beyond 15 days if investigation was not completed. This system worked well enough for more than seven decades. After the country attained independence, we enacted and gave to ourselves the Constitution of India, which came into force on 26.01.1950. Article 21 of the Constitution provides that "no man shall be deprived of his life and personal liberty except in accordance with the procedure established by law". Right of personal liberty is not only a legal right but it is a human right, which is inherent in every citizen of any civilised society. Article 21 only recognises this right. We can read Section 57 and 167 to be the procedure established by law which curtails this right.

89. The investigating agencies, for reasons best known to them, found that it was not possible to complete investigation within 15 days and, therefore, a very unhealthy practice of filing preliminary or incomplete police reports before the magistrate was started to ensure that the accused is kept in custody and not released. This amounted to virtually nullifying the legal provisions. Therefore, the Law Commission of India, in its 41st Report, recommended that the time limit for completion of investigation should be enhanced to 60 days. Even though the Law Commission was recommending enhancement from 15 days to 60 days, it expressed a hope and reposed a trust that the superior courts would prevent misuse of the enhancement of this period.

90. Pursuant to the suggestion of the Law Commission, the new Code of Criminal Procedure, 1973 was enacted, which provided a maximum period of 60 days to complete the investigation failing which the accused would be entitled to be released on bail. A few years later, it was felt that the period of 60 days was also not sufficient and a proposal was made that where the investigation relates to offences punishable with death, imprisonment for life and imprisonment for not less than 10 years or more, the aggregate period for which an accused could be detained without giving any right of bail would be 90 days and in all other cases, it would be 60 days. The words "or more" in the Bill are obviously superfluous. The other phrase "imprisonment for not less than ten years" obviously means 10 years or more. Section 167 of the Code was amended and relevant portion of it reads as follows:

"167. Procedure when investigation cannot be completed in twenty four hours.- (1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty- four hours fixed by section 57, and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub- inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.
(2) The Magistrate to whom an accused person is Forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorize the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:

Provided that-

(a) the Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding,-

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

(ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub- section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;]

(b) no Magistrate shall authorise detention of the accused in custody of the police under this section unless the accused is produced before him in person for the first time and subsequently every time till the accused remains in the custody of the police, but the Magistrate may extend further detention in judicial custody on production of the accused either in person or through the medium of electronic video linkage;

(c) no Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorise detention in the custody of the police.

Explanation I.- For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the period specified in paragraph (a), the accused shall be detained in custody so long as he does not furnish bail].

Explanation II.- If any question arises whether an accused person was produced before the Magistrate as required under clause (b), the production of the accused person may be proved by his signature on the order authorising detention or by the order certified by the Magistrate as to production of the accused person through the medium of electronic video linkage, as the case may be.] Provided further that in case of a woman under eighteen years of age, the detention shall be authorised to be in the custody of a remand home or recognised social institution."

91. We are only concerned with interpretation of the phrase "for a term of not less than ten years" occurring in Section 167(2)(a)(i), which provides a period of 90 days where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term not less than 10 years.

92. In my considered view, without indulging in any semantic gymnastics, the meaning of this provision is absolutely clear. It envisages three types of offences:

(b) Offences which are punishable with death;

(c) Offences which are punishable with imprisonment for life;

(d) Offences which are punishable with a term not less than 10 years.

93. In my view the language of the statute is clear and unambiguous. Out of the three categories of offences, we need to deal only with that category of offences where the punishment prescribed is not less than 10 years. If an offence is punishable with death then whatever be the minimum punishment, the period of investigation permissible would be 90 days. Similarly, if the offence is punishable with life imprisonment, even if the minimum sentence provided is less than 10 years, the period of detention before 'default bail' is available would be 90 days.

94. Keeping in view the legislative history of Section 167, it is clear that the legislature was carving out the more serious offences and giving the investigating agency another 30 days to complete the investigation before the accused became entitled to grant of 'default bail'. It categorises these offences in the three classes:

"I First category comprises of those offences where the maximum punishment was death;

II Second category comprises of those offences where the maximum punishment is life imprisonment.

III The third category comprises of those offences which are punishable with a term not less than 10 years."

95. In the first two categories, the legislature made reference only to the maximum punishment imposable, regardless of the minimum punishment, which may be imposed. Therefore, if a person is charged with an offence, which is punishable with death or life imprisonment, but the minimum imprisonment is less than 10 years, then also the period of 90 days will apply. However, when we look at the third category, the words used by the legislature are "not less than ten years". This obviously means that the punishment should be 10 years or more. This cannot include offences where the maximum punishment is 10 years. It obviously means that the minimum punishment is 10 years whatever be the maximum punishment.

96. While interpreting any statutory provision, it has always been accepted as a golden rule of interpretation that the words used by the legislature should be given their natural meaning. Normally, the courts should be hesitant to add words or subtract words from the statutory provision. An effort should always be made to read the legislative provision in such a way that there is no wastage of words and any construction which makes some words of the statute redundant should be avoided. No doubt, if the natural meaning of the words leads to an interpretation which is contrary to the objects of the Act or makes the provision unworkable or highly unreasonable and arbitrary, then the Courts either add words or subtract words or read down the statute, but this should only be done when there is an ambiguity in the language used. In my view, there is no ambiguity in the wording of Section 167(2) of the Code and, therefore, the wise course would be to follow the principle laid down by Patanjali Shastry, CJI in *Aswini Kumar Ghose v. Arabinda Bose*[35], where he very eloquently held as follows:

> "It is not a sound principle of construction to brush aside words in a statute as being inapposite surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of the statute".

In *Jugal kishore Saraf v. Raw Cotton Co. Ltd.*[36], S.R. Das, J., speaking for this Court, held as follows:

> "The cardinal rule of construction of statutes is to read the statutes literally, that is, by giving to the words their ordinary, natural and grammatical meaning".

97. External aids of interpretation are to be used only when the language of the legislation is ambiguous and admits of two or more meanings. When the language is clear or the ambiguity can be resolved under the more common rules of statutory interpretation, the court would be reluctant to look at external aids of statutory interpretation.

98. Gajendragadkar J., speaking for this Court in the case of *Kanai Lal Sur v. Paramnidhi Sadhukhan*[37], held:

> "6 the first and primary rule of construction is that the intention of the Legislature must be found in the words used by the Legislature itself."

99. These sound principles of statutory construction continue to hold the field. When the natural meaning of the words is clear and unambiguous, no external aids should be used.

100. A bare reading of Section 167 of the Code clearly indicates that if the offence is punishable with death or life imprisonment or with a minimum sentence of 10 years, then Section 167(2)(a)(i) will apply and the accused can apply for 'default bail' only if the investigating agency does not file charge-sheet within 90 days. However, in all cases where the minimum sentence is less than 10 years but the maximum sentence is not death or life imprisonment then Section 167(2)(a)(ii) will apply and the accused will be entitled to grant of 'default bail' after 60 days in case charge-sheet is not filed.

101. Even if I were to assume that two views are possible and third category envisaged in Section 167(2)(a)(ii) is ambiguous, as suggested by learned brother Pant J., then also I have no doubt in my mind that a statute which curtails the liberty of a person must be read strictly. When any human right; a Constitutional fundamental right of a person is curtailed, then the statute which curtails such right must be read strictly. Section 167 of the Code lays down the procedure established by law by which a person can be deprived of his personal liberty, guaranteed to him under Article 21 of the Constitution of India. If two meanings could be attributed to such a provision then the courts must lean towards liberty and accept that interpretation of the statute, which upholds the liberty of the citizen and which keeps the eternal flame of liberty alive. If words are ambiguous then also the court should be reluctant to accept that interpretation which curtails the right of a human being of being free.

102. It has been urged that the accused is charged with very serious offences and, therefore, he should not be released on bail. We are dealing with 'default bail'. There is no discretion in such matters. At times like this, it would be prudent to remind ourselves of what was said by Benjamin Franklin more than two centuries ago:

> "Any society that would give up a little liberty to gain a little security will deserve neither and lose both".

103. Two judgments have been cited before us which dealt with the interpretation of the words "not less than ten years". In *Rajeev Chaudhary v. State (NCT) of Delhi(Supra),* the accused was charged with having committed offence punishable under Section 386 of the Indian Penal Code. The punishment whereof is a term of imprisonment which may extend to 10 years. This Court held that in a case where an offence is punishable with imprisonment for 10 years or more, the accused could be detained up to 90 days. The Court further held that the expression "not less than ten years" obviously means 10 years or more and would cover only those offences for which punishment could be imprisonment for a clear period of 10 years or more.

104. On the other hand, in *Bhupinder Singh & Ors. v. Jarnail Singh & Anr.(Supra),* the Court had distinguished Rajeev Chaudhary's case (supra) and held that the word "punishable" is significant and if the offence is punishable with imprisonment for 10 years, whether that be the maximum punishment or minimum punishment, the accused was not

entitled to 'default bail' prior to 90 days. With due respect, I am unable to agree with the view expressed in this case. Strictly speaking, this question did not arise in Bhupinder Singh's case (supra). In that case, the accused was charged for an offence under Section 304B of the Indian Penal Code and this offence is punishable with imprisonment for a term which shall not be less than 7 years but which may extend to imprisonment for life. Since the offence is punishable with imprisonment for life, then the fact that the minimum sentence provided is 7 years would make no difference, as explained by me above. It is only when the maximum sentence is less than life imprisonment that the minimum sentence must be 10 years to fall in the third category of cases. Certain examples of such cases are offences punishable under Section 21(c) and 22(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985, which provide a minimum sentence of 10 years and a maximum sentence of 20 years.

105. The Code was initially enacted in the year 1898. We are now in the year 2017. 119 years have elapsed. There have been huge technological advancements. We have moved from horse-carts to the space age. From telegraph we have moved to the fast changing vistas in the field of telecommunications including internet, wi fi etc.. Scientific investigation is the need of the hour. The investigating agencies must investigate quickly and efficiently. They must use the latest technology. Scientific investigation should be done in each and every case. If the investigation agencies adopt scientific methods of investigation, the same will be much more efficient and faster. This can be done if there is a special investigative branch in the police, which is trained in investigation. Therefore, there is a need to ensure that the judgment of this Court in the case of *Prakash Singh v. Union of India(Supra),* does not lie in the dusty library racks and is actually enforced. If investigation is done scientifically and efficiently by the police officials, who are earmarked and trained to do investigation work, then I see no reason why investigation cannot normally be completed even within a period of 15 days, as envisaged in the year 1898.

106. The second issue which arises is whether the petitioner had applied for 'default bail' or not. Admittedly, there is no such plea in the bail application, but it is also not disputed that this was the main argument at the time of hearing and this issue was specifically dealt with in the impugned order. In my opinion, once the High Court permitted the counsel for the petitioner to argue the petition on the ground of grant of 'default bail' and no objection was raised by the counsel for the State then at this stage it cannot be urged that the petitioner never applied for 'default bail' and is not entitled to 'default bail'. If this objection had been raised at that stage, either by the Court or by the State, the accused could have either filed a fresh application for grant of 'default bail' or could have prayed for 'default bail' by adding an additional ground in the existing application much before 24.01.2017 when the charge-sheet was filed.

107. It has also been urged on behalf of the State that since the charge-sheet has now been filed, the petitioner is not entitled to grant of 'default bail'. Both my learned brothers have referred to the case of *Sanjay Dutt v. State through C.B.I., Bombay(Supra)*. Reference has also been made to *Uday Mohanlal Acharya v. State of Maharashtra(Supra),*.

108. It is not necessary to multiply citations because in *Union of India v. Nirala Yadav(Supra)* , this Court has considered the entire law on the subject and followed the law laid down in Uday Mohanlal Acharya's case (supra) as well as in *Mohamed Iqbal Madar Sheikh & Ors. v. State of Maharashtra(Supra)*, wherein this Court deprecated the practice followed by some courts of adjourning applications for grant of 'default bail' till the prosecution filed the charge-sheet and held that the statutory right should not be defeated by keeping the applications pending till the charge-sheet is filed.

109. In Uday Mohanlal Acharya's case (supra) the Court culledout six guidelines, which are as follows:

> "1. Under sub-section (2) of Section 167, a Magistrate before whom an accused is produced while the police is investigating into the offence can authorise detention of the accused in such custody as the Magistrate thinks fit for a term not exceeding 15 days on the whole.
>
> 2. Under the proviso to the aforesaid sub-section (2) of Section 167, the Magistrate may authorise detention of the accused otherwise than in the custody of police for a total period not exceeding 90 days where the investigation relates to offence punishable with death, imprisonment for life or imprisonment for a term of not less than 10 years, and 60 days where the investigation relates to any other offence.
>
> 3. On the expiry of the said period of 90 days or 60 days, as the case may be, an indefeasible right accrues in favour of the accused for being released on bail on account of default by the investigating agency in the completion of the investigation within the period prescribed and the accused is entitled to be released on bail, if he is prepared to and furnishes the bail as directed by the Magistrate.
>
> 4. When an application for bail is filed by an accused for enforcement of his indefeasible right alleged to have been accrued in his favour on account of default on the part of the investigating agency in completion of the investigation within the specified period, the Magistrate/court must dispose of it forthwith, on being satisfied that in fact the accused has been in custody for the period of 90 days or 60 days, as specified and no charge-sheet has been filed by the investigating agency. Such prompt action on the part of the Magistrate/court will not enable the prosecution to frustrate the object of the Act and the legislative mandate of an accused being released on bail on account of the default on the part of the investigating agency in completing the investigation within the period stipulated.
>
> 5. If the accused is unable to furnish the bail as directed by the Magistrate, then on a conjoint reading of Explanation I and the proviso to sub-section (2) of Section 167, the continued custody of the accused even beyond the specified period in para (a) will not be unauthorised, and therefore, if during that period the investigation is complete and the charge-sheet is filed then the so-called indefeasible right of the accused would stand extinguished.

> 6. The expression "if not already availed of" used by this Court in Sanjay Dutt v. State through CBI, (1994) 5 SCC 410, must be understood to mean when the accused files an application and is prepared to offer bail on being directed. In other words, on expiry of the period specified in para (a) of the proviso to sub-section (2) of Section 167 if the accused files an application for bail and offers also to furnish the bail on being directed, then it has to be held that the accused has availed of his indefeasible right even though the court has not considered the said application and has not indicated the terms and conditions of bail, and the accused has not furnished the same."

110. A reading of the aforesaid judgments leaves no manner of doubt that if an accused files an application for grant of default bail and is willing to furnish bail then he is deemed to have exercised his right to avail of bail and this right cannot be defeated by filing the charge-sheet thereafter.

111. The right to get 'default bail' is a very important right. Ours is a country where millions of our countrymen are totally illiterate and not aware of their rights. A Constitution Bench of this Court in the case of Sanjay Dutt (supra) has held that the accused must apply for grant of 'default bail'. As far as Section 167 of the Code is concerned, Explanation I to Section 167 provides that notwithstanding the expiry of the period specified (i.e. 60 days or 90 days, as the case may be), the accused can be detained in custody so long as he does not furnish bail. Explanation I to Section 167 of the Code reads as follows:

> "Explanation I.- For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the period specified in paragraph (a), the accused shall be detained in custody so long as he does not furnish bail."

This would, in my opinion, mean that even though the period had expired, the accused would be deemed to be in legal custody till he does not furnish bail. The requirement is of furnishing of bail. The accused does not have to make out any grounds for grant of bail. He does not have to file a detailed application. All he has to aver in the application is that since 60/90 days have expired and charge-sheet has not been filed, he is entitled to bail and is willing to furnish bail. This indefeasible right cannot be defeated by filing the charge-sheet after the accused has offered to furnish bail.

112. This Court in a large number of judgments has held that the right to legal aid is also a fundamental right. Legal aid has to be competent legal aid and, therefore, it is the duty of the counsel representing the accused whether they are paid counsel or legal aid counsel to inform the accused that on the expiry of the statutory period of 60/90 days, they are entitled to 'default bail'. In my view, the magistrate should also not encourage wrongful detention and must inform the accused of his right. In case the accused still does not want to exercise his right then he shall remain in custody but if he chooses to exercise his right and is willing to furnish bail he must be enlarged on bail.

113. In view of the above discussion, my findings are as follows:

> "1. I agree with both my learned brothers that the amendment made to the Prevention of Corruption Act,1988 by the Lokpal and Lokayuktas Act, 2013 applies to all accused charged with offences under this Act irrespective of the fact whether the action is initiated under the Lokpal and Lokayuktas Act, 2013, or any other law;
>
> 2. Section 167(2)(a)(i) of the Code is applicable only in cases where the accused is charged with (i) offences punishable with death and any lower sentence; (ii) offences punishable with life imprisonment and any lower sentence and
>
> (iii) offences punishable with minimum sentence of 10 years;
>
> 3. In all cases where the minimum sentence is less than 10 years but the maximum sentence is not death or life imprisonment then Section 167(2)(a)(ii) will apply and the accused will be entitled to grant of 'default bail' after 60 days in case charge-sheet is not filed.
>
> 4. The right to get this bail is an indefeasible right and this right must be exercised by the accused by offering to furnish bail. On issues 2 to 4, I agree and concur with my learned brother Lokur J. and with due respect I am unable to agree with learned brother Pant J. I agree and concur with the conclusions drawn and directions given by learned brother Lokur J. in Paras 49 to 51 of his judgment.

Judgment Referred.

[1] *Act 1 Scene III line 20-32*

[2] *(2001) 5 SCC 0034*

[3] *386. Extortion by putting a person in fear of death or grievous hurt.—Whoever commits extortion by putting any person in fear of death or of grievous hurt to that person or to any other, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.*

[4] *(2006) 6 SCC 0277*

[5] *304-B. Dowry death.—(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.*
Explanation.—For the purpose of this sub-section, "dowry" shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961 (28 of 1961). (2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.

[6] *Chapter II paragraph 4*

[7](2006) 8 SCC 0001
[8](1994) 5 SCC 0410
[9](1994) 4 SCC 0602
[10] (2014) 9 SCC 0457
[11](2001) 5 SCC 0453
[12] (1996) 1 SCC 0722
[13] (1980) 3 SCC 0488
[14] (1980) 1 SCC 0098
[15] (2007) 4 SCC 0318
[16] (1981) 1 SCC 0503
[17] (1996) 7 SCC 0020
[18] (1984) 3 SCC 0161
[19]AIR 1982 SC 1473
[20] (1983) 2 SCC 0308
[21](1983) 2 SCC 0096
[22] (1981) 1 SCC 0627
[23](1986) 2 SCC 0401
[24] (2012) 8 SCC 0553
[25] (2012) 9 SCC 0001
[26] (2001) 5 SCC 0034
[27](2016) 1 SCC 0578
[28](2006) 6 SCC 0277
[29]Rajya Sabha Debates Vol CVII Nos.13-25, 6 to 25 December 1978, (6th December), pg 203
[30](1994) 5 SCC 0410
[31](2001) 5 SCC 0453
[32](1996) 1 SCC 0718
[33](1996) 1 SCC 0722
[34](1994) 4 SCC 0602
[35]AIR 1952 SC 0369
[36]AIR 1955 SC 0376
[37]AIR 1957 SC 0907